

RECEIVED

AUG 20 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 88-275
)	
FLAGSTAFF BROADCASTING FOUNDATION)	File No. BPH-860707NQ
)	
FLAGSTAFF BROADCASTING PARTNERSHIP)	File No. BPH-860707OC
)	
For Construction Permit)	
Channel 261C2)	
Flagstaff, Arizona)	

To: The Commission

**MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS IN SUPPORT OF
JOINT REQUEST FOR APPROVAL OF UNIVERSAL SETTLEMENT AND
MOTIONS FOR LEAVE TO AMEND**

1. On January 30, 1998, Flagstaff Broadcasting Foundation ("FBF") and Flagstaff Broadcasting Partnership ("FBP") filed a joint request for approval of universal settlement. On July 13, 1998, FBF and FBP filed an amendment to the joint request. Also, on July 13, 1998, FBP filed a motion for leave to amend. Finally, on August 17, 1998, FBP filed a supplement to its amendment. The Mass Media Bureau submits the following comments in support.

2. The joint request as amended and related motion for leave to amend contemplate the grant of FBP's application, with the substitution of Rocket Radio Corp. ("Rocket"), and the dismissal of FBF's application. Rocket will pay FBF a total of \$80,000 and FBP a total of \$100,000. Each applicant declares under penalty of perjury that it did not file its application for the purpose of obtaining a settlement.

3. Review of the settlement agreements, including the affidavits of the applicants' respective principals, shows that the applicants have complied with the requirements of

No. of Copies rec'd 0214
Ltr: BODE

Section 73.3525 of the Commission's Rules, which implement Section 311(c)(3) of the Communications Act of 1934, as amended. The applicants have affirmed that their applications were not filed for an improper purpose. Further, although neither applicant has provided documentation regarding its expenses, Section 309(l)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(l)(3), has temporarily waived the regulation (Section 73.3525(a)(3) of the Commission's Rules) which limits the reimbursement of applicants in a settlement agreement to their legitimate and prudent expenses. Thus, the absence of such documentation is immaterial. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, FCC 98-194, released August 18, 1998 (para. 72 and n. 68) ("*R & O*"). Finally, the applicants have shown that approval of the joint request will serve the public interest by terminating this proceeding and facilitating provision of a new FM radio service to Flagstaff.

4. FBP's motion for leave to amend seeks the substitution of a non-party, Rocket. FBP submits that the substitution is required to effectuate the settlement. In *R & O*, para. 73, the Commission stated that it would waive its policy against "white knight" settlements to facilitate full-market settlements among competing applicants. *See Rebecca Radio of Marco*, 5 FCC Rcd 937 (1990) ("*Rebecca Radio*"). Accordingly, the Commission should grant FBP's motion for leave to amend thereby substituting Rocket.¹

¹ Moreover, since Rocket is a licensee in the area to be served by the new station and has had its qualifications already passed upon by the Commission, there is no need for publication of a notice of its substitution for FBP. *See Rebecca Radio*, 4 FCC Rcd 830, 833 (1989). *See also, Q Prime, Inc.*, 13 FCC Rcd 8406 (OGC 1998).

5. In addition to the proposed Flagstaff station, Rocket is the licensee of Station KQST(FM). Sedona. Arizona. The engineering staff of the Bureau has determined that the contour of the proposed Flagstaff station is completely encompassed by the principal community contour of KQST(FM). Commission records reflect that there are six commercial stations licensed to serve Flagstaff and one licensed to serve Sedona. Under Section 73.3555(a) of the Commission's Rules, an applicant in a market with 14 or fewer commercial radio stations may own up to five commercial radio stations, not more than three of which are in the same service, provided that a party does not own more than 50 percent of the stations in the market. Because Rocket will own only two stations in the market, which is less than 50 percent of the total serving Flagstaff (as defined by the area of overlapping principal community contours, Rocket is in compliance with Section 73.3555(a) of the Commission's Rules.

6. Rocket proposes to locate the new station's antenna on a tower which is already occupied by KQST(FM) and KBPX(TV). Thus, the Bureau requests that the following conditions be imposed on Rocket:

1. Before Program Tests commence, sufficient measurements shall be made to establish that the operation authorized in the construction permit is in compliance with the spurious emissions requirements of 47 C.F.R. Sections 73.317(b) through 73.317(d). All measurements must be made with all stations simultaneously utilizing the shared antenna. These measurements shall be submitted to the Commission along with the FCC Form 302-FM application for license.

2. The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic (RF) fields in excess of FCC guidelines.

3. The Automatic Program Test provisions of 47 C.F.R. Section 73.1620 DO NOT APPLY in this case. A formal request for Program Test Authority must be filed in conjunction with FCC Form 302-FM, Application for License, before program tests will be authorized. This request should be submitted at least 10 days prior to the date on which program tests are desired to commence. This request must contain documentation which demonstrates compliance with the following special operating condition: The permittee/licensee shall, upon completion of construction and during the equipment test period, make proper RF field strength measurements throughout the transmitter site area to determine if there are any areas that exceed the FCC Guidelines for human exposure to RF fields. If necessary, a fence must be constructed at such distance and in such a manner as to prevent the exposure of humans to RF fields in excess of the FCC Guidelines (OET Bulletin No. 65, Edition 97-01, August 1997). The fence must be a type which will preclude casual or inadvertent access and must include warning signs at appropriate intervals, which describe the nature of the hazard. Any areas within the fence found to exceed the recommended guidelines must be clearly marked with appropriate visual warning signs.

4. Documentation demonstrating compliance with the special operating condition may be submitted in advance of the filing of FCC Form 302-FM. The Commission's staff will review it for compliance and respond by letter stating whether automatic Program Test Authority has been reinstated.

7. Accordingly, the Bureau supports grant of the joint request for approval of universal settlement, grant of the motions for leave to amend, dismissal of the FBF

application. grant of FBP's application, as amended, to substitute Rocket, and termination of this proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

A handwritten signature in cursive script, appearing to read "Norman Goldstein", followed by the word "for" in a smaller, less distinct script.

Norman Goldstein
Chief, Complaints and Political Programming Branch

A handwritten signature in cursive script, appearing to read "James W. Shook".

James W. Shook
Attorney

Federal Communications Commission
2025 M Street, N.W., Suite 8210
Washington, D.C. 20554
(202) 418-1430

August 20, 1998

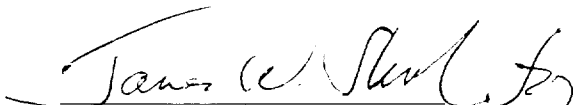
CERTIFICATE OF SERVICE

Talya Lewis of the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has on this 20th day of August, 1998, sent by first class United States mail, copies of the foregoing "**Mass Media Bureau's Consolidated Comments in Support of Joint Request for Approval of Universal Settlement Agreements and Motions for Leave to Amend**" to:

Steve Bachman, Esq.
51429 Hunters Crossing Court
Granger, IN 46530-8856

Lauren H. Kravetz, Esq.
Powell, Goldstein, Frazer & Murphy, LLP
1001 Pennsylvania Ave., N.W., Sixth Floor
Washington, D.C. 20004

John Low, President
Rocket Radio Corp.
P.O. Box 1488
Sedona, AZ 86339


Talya Lewis